

NEBRASKA ADMINISTRATIVE CODE

TITLE 220 - DEPARTMENT OF LABOR

CHAPTER 6 -TRANSFER OF EXPERIENCE ACCOUNT

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §48-654 and §48-607.
002. An employer that acquires the organization, trade, business, or substantially all the assets of another employer may assume the position of such employer with respect to the resources and liabilities of such employer's experience account as if no change had occurred.
003. Upon being notified of the acquisition of a business by another as in section 002, the Department shall provide to the successor employer the latest available balance of the predecessor's experience account as well as the predecessor employer's combined tax rate. The Department may provide forms for the purpose of applying for a transfer of the account.
004. An employer which desires to assume the resources and liabilities of the experience account of a predecessor employer shall make, within one-hundred twenty days of the acquisition, an application for a transfer of such experience account. Such application shall contain the following information:
- A. The name and address of the predecessor employer;
 - B. Payroll data as may be required by the Department; and
 - C. Other information as requested by the Department.
005. The Department shall, upon the receipt of an application for transfer, determine if any of the following circumstances apply and if so, a transfer of an experience account shall be mandatory:

- A. If the successor employer and the predecessor employer were owned or controlled, directly or indirectly, by substantially the same interest or interests by legally enforceable means or otherwise. Ownership of a business entity by the same interest or interests shall be considered substantially the same if at least fifty percent of the business entity of the successor is owned or controlled by individuals who, immediately preceding the change, owned or controlled fifty percent of the business entity; or
 - B. If the acquisition of a business was made solely or primarily for the purpose of obtaining a more favorable rate of combined tax. An acquisition shall be deemed to have been made primarily for such purpose if the Department finds an absence of any reasonable business purpose for the acquisition other than a more favorable combined tax rate.
006. The Department shall, upon receipt of an application for transfer, determine if the following circumstances apply and, if so, will not allow a transfer of an experience account:
- A. If the predecessor or successor employer has not fully complied with Departmental regulations by fully paying all combined taxes due within sixty days after the successor employer has made application for a transfer of the experience account of the predecessor employer.
 - B. If the predecessor employer had paid no wages during the most recent complete calendar year; or
 - C. If the employer does not provide necessary information as requested by the Department pursuant to an application for a transfer.
007. The Department shall notify the successor employer of whether a transfer of an experience account has been allowed or denied. An applicant may appeal the decision if a request is made in writing within thirty days of the mailing of the decision. An application may be withdrawn at any time within one-hundred eighty days following the date of acquisition by the successor employer.

008. A successor employer which continues to file combined tax reports and pay all combined taxes for predecessor employer and who fails to make an application with the Department for a transfer of the experience account within the time period provided in this chapter shall automatically receive the resources and liabilities of the predecessor employer's experience account.
009. Nothing in this chapter shall be read or interpreted to affect the provisions of *Neb. Rev. Stat.* §48-658 which states, in part, that an employer must notify the Department of Labor five days prior to the acquisition of another employer in order to avoid being liable for the combined tax due and unpaid of the previous employer.
010. The Department may redetermine a transfer allowed pursuant to this chapter whenever it finds that the transfer was granted on the basis of misrepresentations of fact, but in no case shall such redetermination be made more than four years after the date of the approval of the transfer.